



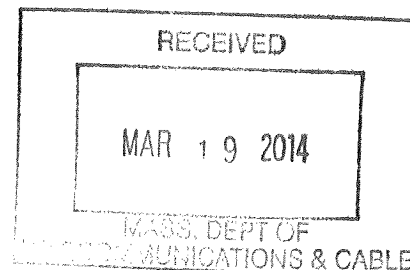
Seaport West
155 Seaport Boulevard
Boston, MA 02210-2600

617 832 1000 main
617 832 7000 fax

Kevin Conroy
617-832-1145 direct
kconroy@foleyhoag.com

March 19, 2014

By Hand Delivery



Catrice C. Williams, Secretary
Dept. of Telecommunications and Cable
1000 Washington Street, 8th Fl., Suite 820
Boston MA 02118-6500

Re: Comcast of Massachusetts III, Inc. v. Peabody Municipal Light Plant and
Peabody Municipal Lighting Commission, Pole Attachment Rate Complaint

Dear Ms. Williams:

Enclosed please find for filing: (i) a Pole Attachment Rate Complaint on behalf of Comcast of Massachusetts III, Inc. ("Comcast") against the Peabody Municipal Light Plant and the Peabody Municipal Lighting Commission; and (ii) Motion for Admission Pro Hac Vice of Tracy Haslett, James F. Ireland, and James W. Tomlinson.

Please note that Comcast has waived its right to a formal hearing and requests that the matter be decided under the streamlined procedures of 220 CMR 45.06.

In order to expedite review, Comcast provides a courtesy copy of the Complaint to the Department of Public Utilities (DPU) consistent with the Memorandum of Agreement between the DPU and the Department regarding the regulation of attachments to poles.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Conroy".

Kevin Conroy

Enclosure

March 19, 2014

Page 2

cc: Paul Abbott, General Counsel, Department of Telecommunications and Cable (by Hand Delivery)
Mark Marini, Secretary, Department of Public Utilities (by Hand Delivery)
Nicholas Scobbo, Esq. (by Hand Delivery)
Philip Durkin, Esq. (by Federal Express)
Glenn Trueira, Manager, Peabody Municipal Light Plant (by Federal Express)
William Aylward, Chairman, Peabody Municipal Lighting Commission (by Federal Express)
Tracy Haslett, Esq. (by Federal Express)
James Ireland, Esq. (by Federal Express)
James Tomlinson, Esq. (by Federal Express)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Comcast of Massachusetts III, Inc.

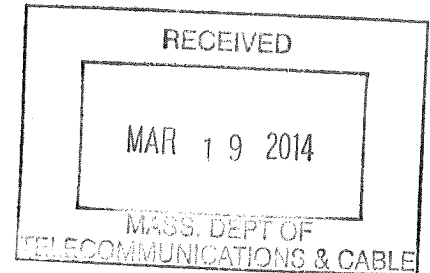
Complainant,

v.

Peabody Municipal Light Plant and Peabody
Municipal Lighting Commission

Respondents.

D.T.C. 14-____



POLE ATTACHMENT RATE COMPLAINT

Kevin C. Conroy (BBO#644894)

Foley Hoag LLP

Seaport West, 155 Seaport Boulevard

Boston, MA 02210-2600

Tel. (617) 832 – 1145

E-Mail: kconroy@foleyhoag.com

Tracy Haslett (*pro hac vice pending*)

Comcast Cable Legal Department

1701 John F. Kennedy Parkway

Philadelphia, PA 19103

Tel. (215) 286-4685

E-Mail tracy_haslett@comcast.com

James F. Ireland III (*pro hac vice pending*)

James W. Tomlinson (*pro hac vice pending*)

Davis Wright Tremaine LLP

1919 Pennsylvania Avenue, N.W., Suite 800

Washington, DC 20006-3401

Tel. (202) 973-4246

E-Mail: jayireland@dwt.com

E-Mail: jimtomlinson@dwt.com

Attorneys for Comcast of Massachusetts III, Inc.

Dated: March 19, 2014

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Comcast of Massachusetts III, Inc.

Complainant,

v.

Peabody Municipal Light Plant and Peabody
Municipal Lighting Commission

Respondents.

D.T.C. 14-____

POLE ATTACHMENT RATE COMPLAINT

Pursuant to G.L. c. 166, § 25A, and 220 CMR § 45.04, Comcast of Massachusetts III, Inc. ("Comcast") brings this Pole Attachment Rate Complaint ("Complaint") against Peabody Municipal Light Plant ("PMLP") and the Peabody Municipal Lighting Commission.

INTRODUCTION AND SUMMARY

Comcast is a franchised cable operator that attaches its facilities to poles owned and controlled by PMLP pursuant to a pole attachment agreement. PMLP is a municipal lighting plant that is subject to the requirements of G.L. c. 166, § 25A, which mandates "just and reasonable" pole attachment rates. In 1998, the Department of Telecommunications and Energy ("DTE") issued an order in D.P.U./D.T.E. 97-82, *Cablevision of Boston Company, et al. v. Boston Edison Company*, 1998 WL 35235111 (April 15, 1998) ("*Cablevision of Boston*")¹ setting forth a rate formula that the DTE used to derive the maximum lawful pole attachment rate Boston Edison may charge. Another 1998 DTE decision, D.T.E. 98-52, *A-R Cable Services, Inc., et al. v. Massachusetts Electric Company* (Nov. 6, 1998) ("*A-R Cable Services*")² made

¹ A copy of this order is attached hereto as Exhibit 1.

² A copy of this order is attached hereto as Exhibit 2.

clear that the rate formula established in *Cablevision of Boston*³ – which the Department dubbed the “Massachusetts Formula”⁴ – applies to *all* utilities (including municipal lighting plants such as PMLP) in Massachusetts. As it explained, “[t]he Department’s intent remains to have a simple, predictable, and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention.”⁵ The Massachusetts Formula can be readily applied to municipal lighting plants such as PMLP using publicly-available cost data found in annual reports filed with the Department of Public Utilities (“DPU”).

Starting in the second quarter of 2011, in abrogation of its pole attachment agreement with Comcast, PMLP unexpectedly and dramatically increased its pole attachment fee from an annual rate of \$12.00 per solely owned (“SO”) pole to \$20.20 per SO pole – a 68% increase. Most recently, PMLP has demanded an even higher annual attachment fee of **\$21.84** per SO pole. These fees are unjust, unreasonable and unlawful under Massachusetts’ statutes, the Department’s regulations and governing case law. PMLP relies on an unlawful pole attachment rate formula to support its excessive fees and asserts that it is not subject to the Massachusetts Formula.

The question presented in this Complaint is straightforward: Does PMLP’s pole attachment fee exceed the maximum fee permitted by the Massachusetts Formula?

Comcast does not believe a hearing is necessary to resolve this dispute consistent with the Department’s objective that “pole attachment proceedings are not meant to be costly, full blown

³ See Exhibit 2, *A-R Cable Services* at 7 (“In the recent *Cablevision* case, the Department established a method to estimate the fully-allocated costs of pole attachments that is consistent with G.L. c. 166, § 25A and the related pole attachment regulations.”); *Id.*, Exhibit 2, Table 1, page 32 (applying the Massachusetts Formula); see also Exhibit 1, *Cablevision of Boston*, Table 1, page 54 (applying the Massachusetts Formula).

⁴ Exhibit 2, *A-R Cable Services* at 7.

⁵ *Id.*

rate cases, but rather streamlined proceedings based on publicly available data.”⁶ Comcast simply asks the Department to apply the Massachusetts Formula and to direct PMLP to charge a pole fee that does not exceed that maximum lawful rate.

THE PARTIES

1. Complainant Comcast is a franchised cable television operator authorized to construct lines across the public rights-of-way in Massachusetts pursuant to G.L. c. 166, § 25A and 220 CMR § 45.02.⁷ Comcast’s address is 115 Epping Road, Exeter, New Hampshire 03833. For purposes of G.L. c. 166, § 25A, Comcast is a licensee.

2. Respondent PMLP is a municipal lighting plant established pursuant to Chapter 286 of the Acts of 1951 (“Chapter 286”), which owns or controls poles used or useful, in whole or in part, for attachments supporting wires or cables for the transmission of intelligence by telegraph, telephone or television in the Commonwealth of Massachusetts. PMLP therefore is a “utility” for purposes of G.L. c. 166, § 25A and 220 CMR § 45.02.

3. According to its website,⁸ PMLP provides electric service within the City of Peabody and a portion of the Town of Lynnfield.

4. Respondent Peabody Municipal Lighting Commission is an elected board of commissioners that governs PMLP as provided for in Chapter 286.

BACKGROUND FACTUAL INFORMATION

5. The primary purpose of Comcast’s attachments to PMLP’s poles is the transmission of intelligence by television, including cable television, and other communications services.⁹

⁶ *Id.*

⁷ See Affidavit of James G. White, Jr. at ¶ 2 (“White Affidavit”).

⁸ See <http://www.pmlp.com/whoweare.html>.

⁹ White Affidavit at ¶ 3.

6. Comcast and PMLP are parties to an Aerial License Agreement (“Pole Agreement”), a copy of which is attached hereto as Exhibit 3. The Pole Agreement was originally executed in 1987 by Adams-Russell Company, Inc., PMLP and New England Telephone and Telegraph Company, Inc. (now Verizon New England Inc. (“Verizon”)), and has subsequently been assigned to Comcast.¹⁰ Verizon is not a party to this Complaint.

7. PMLP invoices Comcast for pole attachments in advance, on a quarterly basis.¹¹

8. Prior to the second quarter of 2011, PMLP invoiced Comcast annual pole attachment rental fees in accordance with the terms of the Pole Agreement, which provides for an automatic increase in attachment fees of \$0.20 per year for SO poles.¹² Consistent with the Pole Agreement, for the first quarter of 2011, PMLP invoiced Comcast at an annual rate of \$12.00 per SO pole and \$6.76 per jointly-owned (“JO”) pole.¹³

9. By letter dated March 3, 2011, PMLP proposed a new pole attachment agreement¹⁴ that dramatically increased annual pole attachment fees to \$20.20 per SO pole and \$11.12 per JO pole.¹⁵ PMLP’s new agreement proposed that PMLP’s pole attachment fees would automatically increase by 2.6 percent annually, with the annual escalator adjusted every five years.¹⁶ Under the proposed agreement, no amendment or modification of the agreement could be valid or binding upon the parties unless made in writing, signed on behalf of each of party by its respective proper

¹⁰ White Affidavit at ¶ 4. *See also* Exhibit 5 (PMLP cover letter acknowledging Pole Agreement with Comcast.).

¹¹ White Affidavit at ¶ 5.

¹² White Affidavit at ¶ 6. *See also* Exhibit 3, Appendix I, as amended February 9, 1995 Appendix I, Section A(3).

¹³ *See* Exhibit 4.

¹⁴ *See* Exhibit 5.

¹⁵ *Id.*, PMLP proposed pole agreement, Appendix I, Section A(2) (page 19).

¹⁶ *Id.*, PMLP proposed pole agreement, Appendix I, Section E (page 20).

officer thereunto and duly authorized, and validated, except with respect to the pole attachment rates in Appendix I.¹⁷

10. Comcast never signed or agreed to PMLP's proposed agreement.¹⁸ To the contrary, on March 16, 2011 Comcast notified PMLP by e-mail that PMLP's proposed agreement would require review by Comcast's legal and regulatory departments before it could be executed by Comcast.¹⁹

11. On September 2, 2011, Comcast, based on review by its counsel, responded to PMLP with proposed written revisions and questions in redline regarding PMLP's proposed agreement.²⁰ Comcast specifically questioned PMLP's proposed pole attachment rates and asked that PMLP provide support for its proposed increased pole fee. PMLP's representative responded by e-mail the same day stating that "[w]e will review and get back to you soon."²¹ PMLP never responded to Comcast's redline of PMLP's proposed pole attachment agreement.²²

12. On April 11, 2013, the New England Cable and Telecommunications Association ("NECTA"), on Comcast's behalf, sent a letter to PMLP inquiring about how PMLP's pole attachment fees were derived.²³

13. PMLP responded to NECTA by letter dated May 24, 2013.²⁴ In that letter, PMLP stated that its pole attachment rates were based on a formula of the American Public Power Association ("APPA").²⁵

¹⁷ *Id.*, PMLP proposed pole agreement, Article XXI, Amendment (page 17).

¹⁸ White Affidavit at ¶ 7.

¹⁹ *See* Exhibit 6.

²⁰ *Id.*

²¹ *Id.*

²² White Affidavit at ¶ 8.

²³ *See* Exhibit 7.

²⁴ *See* Exhibit 8.

²⁵ *Id.*, first unnumbered paragraph.

14. NECTA responded to PMLP by letter dated June 4, 2013 explaining that the APPA formula conflicts with Massachusetts law and results in excessive, unjust and unreasonable pole attachment fees.²⁶ NECTA referred PMLP to the Massachusetts Formula and supporting precedent and NECTA calculated the appropriate rates under the Massachusetts Formula for PMLP.²⁷ NECTA also offered to assist PMLP in calculating its lawful rates and to answer questions or discuss the matter.²⁸ NECTA's repeated attempts to discuss PMLP's unlawful pole rates did not result in a meeting with PMLP or any substantive discussion about those rates.²⁹

15. Although Comcast and PMLP did not enter into a new agreement, PMLP unilaterally increased its pole attachment fees again in the fourth quarter of 2011 and yet again in the fourth quarter of 2012.³⁰ For the fourth quarter of 2013, PMLP increased its pole attachment fees to unjust, unreasonable and unlawful annual rates of \$21.84 per SO pole and \$12.04 per JO pole.³¹

16. The most recent invoice provided by PMLP to Comcast, which covers the first quarter of 2014, again demands unjust, unreasonable and unlawful annual rates of \$21.84 per SO pole and \$12.04 per JO pole.³²

LEGAL BACKGROUND

17. Massachusetts G.L. c. 166, § 25A, requires PMLP, as a utility, to provide Comcast nondiscriminatory access to poles owned or controlled by PMLP on reasonable rates, terms and conditions.³³

²⁶ See Exhibit 9.

²⁷ *Id.*

²⁸ *Id.*

²⁹ White Affidavit at ¶ 9.

³⁰ See Exhibit 10.

³¹ See Exhibit 11.

³² See Exhibit 12.

18. 220 CMR 45.04 permits licensees such as Comcast to bring complaints against utilities such as PMLP to contest pole attachment rates that are “unjust or unreasonable.”³⁴ In addition, the Department has recognized in prior adjudications that affected parties may bring a complaint before the Department alleging unreasonable pole attachment rates under G.L. c. 166, § 25A.³⁵

19. The Department, as the successor to the DTE, has jurisdiction over all aspects of this Complaint under G.L. c. 166, § 25A, 220 CMR § 45.04, and pursuant to paragraph 4 of the Memorandum of Agreement (“MOA”) between the Department and the DPU entered into on October 14, 2008,³⁶ and most recently extended by mutual agreement of the Department and the DPU on February 8, 2013.³⁷

20. “The method for determining pole attachment rates was set by the Department in a proceeding that considered the aerial pole attachment rates of Boston Edison Company.”³⁸ In *A-R Cable Services*, the DTE explained that the pole attachment rate formula promulgated by the DTE in *Cablevision of Boston* – what it labeled the “Massachusetts Formula” – applies to all utilities throughout the Commonwealth:

³³ See G.L. c. 166, § 25A (“‘Utility’, means any person, firm, corporation or *municipal lighting plant* that owns or controls or shares ownership or control of poles ... used or useful, in whole or in part, for supporting or enclosing wires or cables for the transmission of intelligence by telegraph, telephone or television or for the transmission of electricity for light, heat or power.”) (Emphasis added); 220 CMR 45.02 (defining “utility” in the same manner as G.L. c. 166, § 25A).

³⁴ See 220 CMR 45.04(b) and (d).

³⁵ See, e.g., Exhibit 1, *Cablevision of Boston*; Exhibit 2, *A-R Cable Services*.

³⁶ This document is available from the FCC website at the following URL:

<http://apps.fcc.gov/ecfs/document/view;jsessionid=XcJSP2YS9kTHLRvdpGrRrDpKGpFdHWjQT27dfZhmIJz2dX0X7GPw!-1969853125!-1221852939?id=7020809930>.

³⁷ The MOA extension is available at: <http://www.mass.gov/eea/docs/dpu/electric/pole-attachments-and-double-poles/101508memdpu-dtc.pdf>.

³⁸ Exhibit 2, *A-R Cable Services* at 3 (citing *Cablevision of Boston*).

B. Massachusetts Formula

In the recent [*Cablevision of Boston*] case, the Department established a method to estimate the fully-allocated costs of pole attachment that is consistent with G.L. c. 166, § 25A and the related pole attachment regulations. The Department's pole attachment formula reasonably balances the interests of subscribers of CATV services as well as the interests of consumers of utility services as required by G.L. c. 166, § 25A. The Department's goal in adopting this pole attachment formula was to simplify the regulation of pole attachment rates as much as possible by adopting standards that rely upon publicly available data. The Department's intent remains to have a simple, predictable, and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention ... ³⁹

DISCUSSION

21. The annual pole attachment rental fees demanded by PMLP – currently \$21.84 per SO pole and \$12.04 per JO pole – exceed the maximum amounts allowed by the Massachusetts Formula and are therefore unjust and unreasonable.

22. As shown in Exhibit 13, Comcast has calculated PMLP's maximum lawful pole attachment rental fees using the Massachusetts Formula. In accordance with 220 CMR 45.04(d), the data and information used by Comcast is “based on historical or original cost methodology” and is “derived from ... reports filed with state or regulatory agencies” – namely, PMLP's most recent Annual Report filed with the DPU (2012). A copy of that report is attached as Exhibit 14.

23. The Massachusetts Formula can be easily applied to municipal lighting plants such as PMLP using publicly-available cost data found in annual reports filed with the DPU.

24. Because PMLP is a not-for-profit, government entity, on information and belief, it does not pay income taxes or have accumulated deferred taxes (“ADT”). Therefore, the portions of the Massachusetts Formula pertaining to ADT do not apply to PMLP.⁴⁰

³⁹ *Id.* at 7 (citations omitted).

⁴⁰ See Exhibit 13, Rows D, L, R and MM.

25. Although PMLP does not pay income taxes, the 2012 Annual Report indicates that PMLP made a \$480,000 payment in lieu of taxes to the City of Peabody and a \$15,000 payment in lieu of taxes to the Town of Lynnfield.⁴¹ These payments are the logical equivalents of the “normalized tax expense” carrying charge component of the Massachusetts Formula.⁴²

26. As a not-for-profit, government entity, PMLP does not have a rate of return (as investor-owned utilities do). However, PMLP has represented to Comcast that it has a “utility ‘margin’ on poles, towers and fixtures” of 5.0%.⁴³ Comcast does not object to using this value.⁴⁴

27. As shown on Exhibit 13, PMLP’s maximum lawful annual pole attachment rental fee under the Massachusetts Formula is **\$12.33 per SO pole** and **\$6.78 per JO pole** based on data from PMLP’s 2012 Annual Report.⁴⁵

28. In accordance with 220 CMR 45.04(d), Comcast provides the following information:

- Gross Investment in Poles: PMLP’s gross investment for pole lines is \$9,236,494.⁴⁶
- Appurtenances: According to PMLP, its percentage of investment in appurtenances not used by or useful to third-party attachers such as Comcast is the Department’s presumption of 15%.⁴⁷
- Depreciation Reserve for Poles: PMLP’s depreciation reserve for the gross pole investment is derived by subtracting PMLP’s net investment in poles⁴⁸ from its gross investment in poles.⁴⁹ That amount is \$6,437,402.⁵⁰

⁴¹ See Exhibit 14, page 21, cells b24 and b25.

⁴² See Exhibit 13, Row O.

⁴³ See Exhibit 8 at page 5.

⁴⁴ See Exhibit 13, Row CC.

⁴⁵ See Exhibit 13, Row JJ-SO and Row JJ-JO.

⁴⁶ See Exhibit 13, Row A; Exhibit 13, page 8B, cell g6.

⁴⁷ See Exhibit 8 at page 6; Ex. 1, *Cablevision of Boston* at 30; Ex. 2, *A-R Cable Services* at 12.

⁴⁸ Exhibit 14, page 17, cell g6.

- Pole Count: PMLP has represented to Comcast that it owns “approx. 8,000 total poles” including “approx. 7,040 JO poles” in which PMLP has a 55% ownership interest and Verizon has a 45% ownership interest.⁵¹ This data results in a pole equivalents figure of 4,832 poles.⁵² However, PMLP’s approximation is incorrect because PMLP has invoiced Comcast for 7,860 JO attachments⁵³ – 820 more than PMLP has approximated. For purposes of this Complaint, Comcast has conservatively estimated that PMLP has 5,283 pole equivalents⁵⁴ and Comcast reserves the right to modify its rate calculation based on a more accurate pole count from PMLP.
- Number of Poles at Issue in Complaint: Comcast currently has 220 attachments on PMLP SO poles and 7,860 attachments on PMLP JO poles.⁵⁵
- Annual Carrying Charges: As shown in Exhibit 13, Comcast has computed the following carrying charges:
 - administrative – 18.87% (Row N);
 - tax – 1.33% (Row T);
 - maintenance – 1.03% (Row W);
 - depreciation – 10.72% (Row BB); and
 - return – 5.0% (Row CC).

The total carrying charges are 36.96%.⁵⁶

⁴⁹ Exhibit 14, page 8B, cell g6.

⁵⁰ Exhibit 13, Row B.

⁵¹ Exhibit 8 at page 5.

⁵² $4,832 \text{ pole equivalents} = (7,040 \text{ JO poles} \times 55\%) + 960 \text{ SO poles}$.

⁵³ See Exhibit 12.

⁵⁴ $5,283 \text{ pole equivalents} = (7,860 \text{ JO poles} \times 55\%) + 960 \text{ SO poles}$.

⁵⁵ See Exhibit 12.

⁵⁶ See Exhibit 13, Row HH.

- Average Amount of Usable Space: PMLP has represented to Comcast that its average usable space per pole is 13.5 feet,⁵⁷ which is the presumption of the Massachusetts Formula.⁵⁸ Comcast does not object to the use of this presumption for purposes of this Complaint.⁵⁹
- Reimbursements Received from Comcast for Non-Recurring Costs: Comcast understands that reimbursements received for non-recurring costs (*i.e.*, make-ready costs) are not part of the Massachusetts Formula.

COMCAST'S EFFORTS TO RESOLVE THE DISPUTE

29. Since the second quarter of 2011, when PMLP unilaterally increased its pole attachment fee by 68%, PMLP has been on notice that Comcast did not agree with PMLP's pole attachment rates. After September 2011, when Comcast refused to sign or otherwise agree to PMLP's proposed agreement and specifically raised the issue of PMLP's pole attachment rates, PMLP has never responded directly to Comcast's concerns. NECTA's efforts to resolve the rate issues with PMLP on behalf of Comcast between April 2013 and February 2014 were unfruitful.⁶⁰

30. In a letter to NECTA dated February 3, 2014, PMLP again flatly refused to comply with the Massachusetts Formula.⁶¹ This letter also makes it clear that PMLP intends "to continue the use of [its] formula in the future."⁶²

31. By letter dated February 17, 2014, Comcast again protested PMLP's pole attachment fees for the fourth quarter of 2013 and the first quarter of 2014 on the grounds that

⁵⁷ See Exhibit 8 at page 9.

⁵⁸ See Exhibit 1, *Cablevision of Boston* at 43-44; Exhibit 2, *A-R Cable Services* at 27-29.

⁵⁹ See Exhibit 13, Row EE.

⁶⁰ White Affidavit at ¶ 10.

⁶¹ See Exhibit 15.

⁶² *Id.*, page2, first paragraph.

those fees exceed the amount permitted by law.⁶³ The letter requested that PMLP reduce its fees to the amount allowed by law for the periods covered by the invoices, and reserved Comcast's right to file a complaint if PMLP failed to do so.⁶⁴ PMLP has not responded to Comcast's letter.⁶⁵

32. Comcast in good faith paid PMLP's excessive invoices beginning in April 2011 while awaiting a response concerning PMLP's rate calculation and while attempting to reach an amicable resolution of the issues.⁶⁶

33. Comcast also is now processing payment to PMLP for the undisputed amounts owed for the fourth quarter of 2013 and the first quarter of 2014. Comcast will remit payment to PMLP at the undisputed rate of \$12.33 per SO pole and \$6.78 per JO pole upon the completion of processing, subject to the outcome of this proceeding.⁶⁷

34. Although Comcast has diligently attempted to resolve this matter through negotiations, it is apparent that PMLP and Comcast are unable to agree on pole attachment fees.⁶⁸ PMLP's continuing blatant disregard for binding Department rules and precedent requires Department action to remedy PMLP's ongoing imposition of unjust, unreasonable and unlawful pole attachment fees on Comcast.

WAIVER OF REQUEST FOR HEARING

35. As described above, this Complaint presents a straight-forward question of law, which Comcast believes can be decided under the streamlined procedures of 220 CMR 45.06. In addition, Comcast would like to minimize the expenditure of Department resources needed to

⁶³ See Exhibit 16.

⁶⁴ *Id.*

⁶⁵ White Affidavit at ¶ 11.

⁶⁶ White Affidavit at ¶ 12.

⁶⁷ White Affidavit at ¶ 13.

⁶⁸ White Affidavit at ¶ 14.

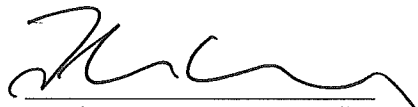
resolve this Complaint, which is solely necessitated by PMLP's unjustified intransigence and its disregard of the Department's well established rules and case law. Accordingly, Comcast waives its right to a formal hearing.

REQUESTED RELIEF

36. In accordance with 220 CMR 45.07, Comcast respectfully requests that the Department: (1) for the fourth quarter of 2013 and the first three quarters of 2014, prescribe PMLP annual pole attachment fees of \$12.33 for SO poles and \$6.78 for JO poles; and (2) for future years commencing with the fourth quarter of 2014, direct PMLP to derive its pole attachment fees in strict compliance with the Massachusetts Formula..

37. 220 CMR 45.07 further permits the Department to "order relief as the Department finds appropriate under the circumstances." Given the frivolous nature of PMLP's legal assertions, which solely necessitated this Complaint, Comcast respectfully submits that the Department should require PMLP to reimburse Comcast for its attorney's fees associated with preparing and prosecuting this Complaint.

Respectfully submitted,



Kevin C. Conroy (BBO #644894)

Foley Hoag LLP

Seaport West, 155 Seaport Boulevard

Boston, MA 02210-2600

Tel. (617) 832 - 1145

E-Mail: kconroy@foleyhoag.com

Tracy Haslett (*pro hac vice pending*)

Comcast Cable Legal Department

1701 John F. Kennedy Parkway

Philadelphia, PA 19103

Tel. (215) 286-4685

E-Mail tracy_haslett@comcast.com

James F. Ireland III (*pro hac vice* pending)
James W. Tomlinson (*pro hac vice* pending)
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, DC 20006-3401
Tel. (202) 973 - 4246
E-Mail: jayireland@dwt.com
E-Mail: jimtomlinson@dwt.com

Attorneys for Comcast of Massachusetts III, Inc.

Dated: March 19, 2014

CERTIFICATE OF SERVICE


I hereby certify that on March 19, 2014, I served the foregoing Pole Attachment Rate Complaint by personal delivery and Federal Express next day delivery, in accordance with the requirements of 220 CMR 1.05(1) on:

Nicholas Scobbo, Esq. (by hand delivery)
Ferriter Scobbo
125 High Street
Boston, MA 02110

Philip Durkin, Esq. (by Federal Express)
27 Lowell Street
Peabody, MA 01960

Glenn Trueira, Manager (by Federal Express)
Peabody Municipal Light Plant
201 Warren Street Extension
Peabody, MA 01960

William Aylward, Chairman (by Federal Express)
Peabody Municipal Lighting Commission
201 Warren Street Extension
Peabody, MA 01960



Kevin Conroy